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**2007 Wis Eth Bd 7**  
**IMPROPER USE OF OFFICE, LOBBYING LAW**

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An organization that employs a lobbyist in Wisconsin may furnish an elected state official the opportunity to narrate a public service announcement and purchase airtime for its dissemination, when the dissemination is not proximate to an election at which the official is or is likely to be a candidate.

Facts

- ¶1 We base this opinion upon these understandings:
- a. You write on behalf of a lobbying principal registered in Wisconsin.
  - b. The organization has drafted two public service announcements warning about the danger of underage drinking.
  - c. The lobbying organization proposes to purchase airtime for the broadcast of the announcements.

Question

- ¶2 The Ethics Board understands your question to be:

May a lobbying organization furnish an elected state official the opportunity to narrate the public service announcement for which the organization will purchase airtime?

Discussion

¶3 A lobbying organization may furnish an elected state official the opportunity to narrate the public service announcement about which you have asked and purchase airtime for its dissemination when the dissemination is not proximate to an election at which the official is or is likely to be a candidate.

**Ethics Code's application**

¶4 Reduced to its elements, § 19.45 (2), *Wisconsin Statutes*, provides, in pertinent part:

No state public official  
May use public position or office  
To obtain anything of substantial value  
For the private benefit of himself or herself or his or her immediate family, or

for an organization with which he or she is associated.<sup>1</sup>

¶5 An official's accepting an item or service offered because the individual holds a government position is a use of office.<sup>2</sup>

¶6 The purchase of airtime about which you have asked is something of value,<sup>3</sup> and its value is substantial.<sup>4</sup>

¶7 Because the organization's communication of its message to the general public conveys no private benefit to the public official, at least any benefit that is not merely incidental to the company's larger enterprise, §19.45 (2), *Wisconsin Statutes*, does not address or prohibit the organization's purchase of airtime and selection of a state official as the narrator of the company's message.<sup>5</sup>

### **Lobbying law's application**

#### *Application to a candidate for elective office*

¶8 Reduced to its elements, § 13.625, *Wisconsin Statutes*, provides, in pertinent part:

No lobbying principal  
May furnish  
To a candidate for elective state office  
Anything of pecuniary value

AND

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<sup>1</sup> Section 19.45 (2), *Wisconsin Statutes*, provides:

**19.45 (2)** No state public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. \* \* \* \*

<sup>2</sup> See, e.g., 2006 Wis Eth Bd 04, ¶6; 1995 Wis Eth Bd 5, ¶5; 4 Op. Eth. Bd. 71 (1980).

<sup>3</sup> Section 19.42 (1), *Wisconsin Statutes*.

<sup>4</sup> "Substantial" is anything more than token or inconsequential value and may be synonymous with "merchantable value". 2006 Wis Eth Bd 04, ¶10; 7 Op. Eth. Bd. 2 (1983); 5 Op. Eth. Bd. 99 (1982); 5 Op. Eth. Bd. 73 (1981).

<sup>5</sup> "Private benefit" refers to an advantage for oneself. 7 Op. Eth. Bd. 13 (1983).

Even if acceptance of an item or service is of private benefit to a state official, the official may still accept an item or service if the public, rather than the official, is the primary beneficiary. 1997 Wis Eth Bd 13 ¶5. Even if there is a private benefit associated with an act, it is consistent with the Ethics Code if the private benefit is merely incidental to the public benefit. 8 Op. Eth. Bd. 50 (1985); 6 Op. Eth. Bd. 12 (1982). The test is not whether there is any personal benefit; the issue is whether the benefit conveyed is primarily a personal benefit. 2003 Wis Eth Bd 1 ¶6 citing 1996 Wis Eth Bd 15, ¶5; 1996 Wis Eth Bd 02, ¶6. In at least one instance, a legislator could participate in a charitable golf outing because the event was primarily to benefit charities, not the legislator.

Application of sec. 19.45(2) turns on whether the official's act results in a private benefit for the official, regardless of the official's motives. In making a determination on this section's applicability, the Board might take into account (i) whether the private benefit is substantial when considered alone; (ii) the relative importance of the private benefit when compared either to public benefits or to all benefits conferred; or (iii) even if the private benefit is substantial whether it is separable from the public or other benefits obtained.

No candidate for elective state office  
May accept  
Anything of pecuniary value  
From a lobbying principal.<sup>6</sup>

¶9 “Candidate” means a “person for whom it is contemplated or desired that votes be cast at any election held within the state . . . and who either tacitly or expressly consents to be so considered.”<sup>7</sup> For purposes of this opinion, we will presume that the state official is a candidate.

¶10 The purchase of airtime for a public service announcement featuring a person in a positive light is a substantial benefit to a candidate for election to state office. Purchase of the airtime’s cost can be a pecuniary benefit to the candidate either because it relieves the candidate of a cost that the candidate otherwise would pay or because it affords the candidate a powerful source of positive name recognition for which the candidate could not otherwise pay. Under the lobbying law, the fact that there may be a benefit to the public as well as to an official is irrelevant if the official is the recipient of an item or service of pecuniary value.

¶11 However, airtime’s pecuniary value to a candidate may have a temporal quality. A Jack-o’-lantern may have more value in October than in April; a decorated balsam fir in December than in June; and skyrockets on Independence Day than Saint Valentine’s Day. Airtime for a public service announcement featuring a candidate for election during the days and weeks preceding an election has greater pecuniary value to the candidate than would a like purchase months or years before a vote at which the candidate might stand for election.

¶12 The term of office to which voters elected the official in question extends to the opening days of 2011. The State of Wisconsin has not set any elections for statewide partisan offices until November 2010 – more than thirty-six months hence. Today, the pecuniary value, if any, of airtime for a public service announcement featuring a person who may then be a candidate is too remote and speculative to permit application of §13.625, *Wisconsin Statutes*.<sup>8</sup>

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<sup>6</sup> Section 13.625, *Wisconsin Statutes*, provides, in pertinent part:

**13.625 Prohibited practices. (1)** No lobbyist may:

\* \* \*

(b) Furnish to any . . . candidate for an elective state office . . . :  
3. Food, meals, beverages, money or any other thing of pecuniary value . . . .

\* \* \*

(2) No principal may engage in the practices prohibited under sub. (1) (b) . . . .

(3) No candidate for an elective state office . . . may solicit or accept anything of pecuniary value from a lobbyist or principal . . . .

<sup>7</sup> Sections 11.01 (1) and 13.62 (5g), *Wisconsin Statutes*.

<sup>8</sup> The lobbying law applies equally to an elected state official as well as to a candidate for elective state office. The organization’s purchase of airtime for dissemination of the company’s message, narrated by a state official to the effect that parents should not provide alcohol to minors does not occasion any monetary or pecuniary consequence

Advice

¶13 An organization that employs a lobbyist in Wisconsin may furnish an elected state official the opportunity to narrate the public service announcement about which you have asked and purchase airtime for its dissemination when the dissemination is not proximate<sup>9</sup> to an election at which the official is or is likely to be a candidate.

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for the official. It is unlikely to have pecuniary value to an official, as official, who is not and is not likely to be a candidate for state office.

<sup>9</sup> Although the contour of “proximate” is not precise, we have, since July 1995, cautioned: Within the five months preceding an election for a governmental office for which an elected state official will be a candidate, an elected state official should not permit the use of his or her name or image or office in a “public service announcement”.  
“Public Service Announcements,” Ethics Board publication #245, created July 2005.